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AND CIVIL APPELLATE LAW

July 21, 1995

DOCKET FILE COPY ORIGINAL

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JUL 25 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Attn: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Re: MM Docket No. 95-74 RM-8579; Proposed Allotment of Channel 254A to Benavides, Texas

Dear FCC:

Enclosed herewith please find original and four copies of the Comments and Counterproposal of Cosmopolitan Enterprises of Victoria, Inc. with regard to the above captioned matter, and in particular, the proposed Allotment of Channel 254A to Benavides, Texas.

By copy of this letter, we are sending a copy of such Comments and Counterproposal to Mr. Peltzman, attorney for Benavides Communications.

Thank you for your attention hereto.

Yours very truly,

William F. Moeller

WFM:cls
Enclosures

cc: Lee J. Peltzman, Esquire
2000 L Street, Suite 200
Washington, DC 20030

CM/RRR #Z 081 743 341

No. of Copies rec'd 024
List A B C D E

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	MM Docket No. 95-74
Petition filed by Benavides Communications, permittee of Station KXTM(FM), Channel 299C2, Benavides, Texas, and the proposed allotment of Channel 254A to Benavides, Texas	)	RM-8579

TO: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

COMMENTS AND COUNTERPROPOSAL

Cosmopolitan Enterprises of Victoria, Inc. ("Cosmopolitan"), licensee of Radio Station KTXN (FM), Victoria, Texas, hereby submits its Comments and Counterproposal in response to the Notice of Proposed Rule Making in the above captioned proceeding, released June 1, 1995.

Cosmopolitan is the licensee of KTXN (FM), operating on Channel 254C1 at Victoria, Texas. Under the Counterproposal advanced herein, Cosmopolitan could further upgrade to Channel 254C, utilizing its existing transmitter site, and would be able to increase its coverage by approximately 35%, without any adverse public interest consequences.

Attached hereto is a Technical Exhibit prepared by Cosmopolitan, demonstrating that the Counterproposal advanced herein can be implemented with minimal changes in the

Commission's Table of Allotments. Specifically, the Counter-proposal made herein requires the substitution of Channel 265A for Benavides, Texas instead of Channel 254A to Benavides, Texas, as proposed by the Commission in the above captioned proceeding.

Prior hereto Cosmopolitan has filed an application with the Federal Aviation Administration ("FAA") (which application has been approved) to build a new tower on this present site of KTXN which would be approximately 1,265 feet overall above ground (see EXHIBIT "A" attached) to mount the transmitting mast of all Victoria FM radio stations and several television stations in a common location (antenna farm); such FAA approval has been denied for other sites in the Victoria, Texas area because of air traffic problems. Such improvement of Cosmopolitan's facilities are needed because of the population growth of the Victoria, Texas area in the main resulting from approximately six chemical industries in the area, the largest of which is Formosa. Such population growth will eventually necessitate the improvement of facilities by Cosmopolitan, which improvements would be difficult, if not impossible, to effect, and the cost would be prohibitive if the proposed allotment is approved. In fact, Cosmopolitan has already found it necessary to go to another transmission facility (the KVCT tower) on a temporary basis with Cosmopolitan's transmission facilities being temporarily used as a backup facility. Cosmopolitan's transmission facilities have the following coordinates: 28°48'46"; 97°03'45".

In addition, granting the counterproposed allotment of Channel 265A to Benavides, Texas would not be harmful to any other allocation of either Mexican or U.S. The attached Technical Exhibit substantiates that the counterproposal does in fact conform to all FCC Allotment Rules and the 1995 (1992) U.S./Mexican Treaty.

If the proposed allotment of Channel 254A to Benavides is approved by the FCC, Cosmopolitan will have the following additional problems:

1. Reference is made to FCC Zone III TV Allocations, which is located along the area from Brownsville, Texas to Key West, Florida, encompassing both Victoria and Benavides, Texas; in such FCC Zone III, FCC has recognized that atmospheric conditions give added distance to signal propagation, which added signal propagation is not found in other parts of the country. Such atmospheric conditions also give added distance to signal propagation of FM stations which are located at the top of Channel 6. Such interference has been noted for thirty years in the broadcasting by Cosmopolitan. This is transmitted to illustrate that the FCC recognizes the interference problem.

2. If the proposed allotment of Channel 254A to Benavides, Texas is approved, Benavides itself will be harmed and impaired because of the increased interference explained in No. 1 above, and its area of transmission would be greatly limited to the extent that its transmission may not even be heard in Benavides itself, the site of transmission being some 6 miles South of

Benavides; under counterproposal of Cosmopolitan, Channel 265A has no restrictions and can be built in downtown Benavides and has no interference problems connected with it. Also, if the proposed allotment of Channel 254A is approved, neither the Benavides station nor Cosmopolitan station can upgrade; whereas, the 265A allotment would permit both to upgrade.

For the record, it is respectfully submitted that Bruni is a very small community with limited population (less than 1,000 population) and limited facilities; Bruni, because of its limitations as to size and businesses, does not merit a C2 allotment.

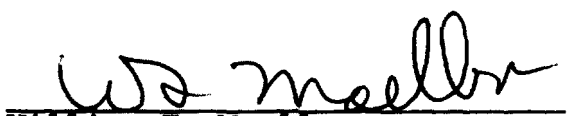
For the foregoing reasons, it is respectfully submitted that the public interest would be served by the substitution of Channel 265A instead of Channel 254A at Benavides, Texas. Such allotment, for the foregoing reasons, is in the public interest.

Respectfully submitted,

COSMOPOLITAN ENTERPRISES OF
VICTORIA, INC.
P. O. Box 2682
Victoria, Texas 77902

By _____
John J. Tibiletti
President

FLY AND MOELLER
1908 N. Laurent St., Suite 520
P. O. Box 3547
Victoria, Texas 77903
(512) 573-4315

By 
William F. Moeller
State Bar No. 14248000

ATTORNEYS FOR COSMOPOLITAN ENTERPRISES
OF VICTORIA, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing COMMENTS AND COUNTERPROPOSAL was sent this 21st day of July, 1995, by certified mail, return receipt requested, to:

Lee J. Peltzman, Esquire
2000 L Street, Suite 200
Washington, DC 20036


William F. Moeller

7-14-95 | CO-NO GO STUDIES | BENAVIDES 27 35 98 24 NATIONAL ATLAS
100.9 MHZ <A265> | 27.58 98.4 CO-ORDINATES

	Initials	Date
Prepared By		
Approved By		

C WILSON JONES COMPANY 87113C BUFF 87113C GREEN MADE IN U.S.A.

CO-CH

KEPG	CO ALEMAN	100.7 (-200) KASE (C)		CO ACUNA (A)		GUADALUPE (A) CH		100.5 (-400) KRBORMIN (C2)	ANDO CITY	100.3 (-600) KTEX (C)	BRNSVL	MONCLOVA CH (B)	
28-47 97 03	26-25 99-01	30-19	97-48	29-20	100-58	22-47	102-30	27-21	99-14	28-03	97-45	26-55	101-25
27.58 98.4	27 58 98.4	27.58	98.4	27.58	98.4	27.58	98.4	27.56	98.4	27.58	98.4	27.58	98.4
28.78 97.05	26.42 99.20	30.32	97.8	29.33	100.97	23.78	102.5	27.35	99.23	26.87	97.75	26.92	101.42
1.2 .95	1.16 .6	2.74	.6	1.75	2.52	4.8	4.1	.23	.83	1.41	.65	.66	3.02
28.18	27	28.45		28.45		25.2		27.40		26.9		27.25	
68.857 61.120	68847 61.675	68.867	60.547	68.867	60.547	68.828	62.728	68.847	61.675	68.847	61.675	68.847	61.675
82.6 58	79.86 35	188.7	36.33	120.5	155.6	330.4	257.2	15.83	51.19	97.09	40.5	45.44	186.3
6827 +3371	6878+2282	35606	+1319.7	14524	+2421.3	109147	+6614.4	250.7	+2626	14423	+1605	2064.7	+34692
10198.5	8660.28	36925.7		38737		175291		2870.7		10337		36756.9	
100.9 112 93 Mi 149 KM		192.4	80.7	196.8	714.9	480.7	699.9	53.6	85.7	105	168	191.7	301.8
AA→AA MET	MET	AA→AZ 200 68 MET				AA→AZ 200 68 MET						AA→B 600 69 MET	
ATOA	ATOA	ATOA 200 165	MET					A→C2 460 56 KM MET		A→C 600 95 KM MET		KM	
CO-CH 115 KM MET	CO-CH 115 KM MET												

4X ROSITA (A)

28-21	101-38
27.58	98.4
28.35	101.63
.77	3.23
27.97	
68.857	61.120
53.02	197.4
28 11.18	+3897.7
6708.43	
81.9	131

AA→A 600 31 KM MET

LINE 11 AND 12 1995 U.S./MEXICAN AGREEMENT
LINE 17 AND 18 47 CFR FCC SECTION 73.207

100.5 MHZ CH 265 CONT'D

	Initials	Dat
Prepared By		
Approved By		

© WILSON JONES COMPANY

MADE IN U.S.A.

1	2	3	4	5	6	7	8	9	10	11	12	13
18 E.T. CH 266 (+250KHZ)		101.3 CH 267 (+400KHZ)				101.5 CH 268 (+600 KHZ)						
(A) T	(A) CH		C.O	KWCN (A)		MONTEREY (A)		KOKE (<)		PIEDRAS NEGRAS (A)		MATAMOROS (A)
REYNOSA	SABINAS H.	PARRAS (A)		77-55	97-24	25-40	100-20	30-10	96-52	28-40	100-32	27-50 97-31
26.05 98-8	27.50 101.09	25-30	102-11	27.38	98.4	27.38	98.4	27.38	98.4	27.38	98.4	27.38 98.4
27.58 98.4	27.38 98.4	27.56	98.4	27.92	97.42	25.167	100.33	30.17	96.87	28.67	100.53	28.87 97.32
26.08 98.3	27.83 101.15	25.5	102.18	34	.98	191	193	2.59	1.83	1.09	2.13	1.75 .68
1.5 .1	.25 2.75	2.08	3.78	27.75		26.6		28.27		28		27
26.83	27.7	26.7		68.847	61.120	68.847	61.675	68.867	60.547	68.857	61.120	68.847 61.675
68.847 61.675	68.857 61.120	68.847	61.675	23.41	39.89	131.5	119.02	178.37	92.64	75.05	130.2	120.5 54.77
103.3 6.17	17.7 168	14.72	233	5.70	+35877	17.251	+14169	818.14	+8581.5	31.33	+1648	145.14 +2.96
106.48+38	296 +2825	20504	+54350	44.35.11		314.597		4.029		32.631		174.42
109.28	3417	74856		64.2 103		177.4 1284		200.91.372		150.4 270.7		132.1 211
103.45 166	58.5 53.5	273.6	143775									
AA=A	AA=A200	AA=A200	68KM MET	AA=B400 65MET		AA=B400 65MET		AA=A600 95MET		AA=A600 31 MET		
200 63MET	68KM MET			AT A=1400 85KM MET				A=A600 95 MET KM				
RVPA (A)				R.O BRAND (A)		LONGITUDE & LATITUDE						
26.04 97.13				26.10 98.03		LONGITUDE & LATITUDE		DECIMAL FOR BEARINGS				
27.58 98.4				27.38 98.4		LONGITUDE & LATITUDE		DECIMAL FOR R.O BRAND				
26.07 97.22				26.17 98.05		DIFFERENCE IN LONGITUDE & LATITUDE						
1.51 1.18				1.41 .35		MID-POINT LATITUDE						
26.83				26.9		MILES PER DEGREE LAT (A1)						
68.847 61.675				68.847 61.675		MILES DISTANCE LONGITUDE AND LAT. TUDE						
103.96 72.78				91.04 21.1		SQUARE OF (23)						
108.07+5296				94.23 +14.1		SUM OF SQUARES OF (24)						
16103				9389		SQUARE ROOT IN MILES AND KILOMETERS						
126.9 203				99.14 159.1		U.S. MEXICAN AGREEMENT PROVISION. MET OR UNMET,						
		DISTANCE		AA=A400 3.1KM MET		OR FCC 73.207 MET OR UNMET						
		MILES										
		KILOMETERS										
ATOA200												
45KM MET				LINES 13 AND 29 GET 45 FCC 73.207								

100.9 MHZ CHANNEL 265A

FREQUENCY RELATION	REQUIRED SPACING 1995 U.S.-MEXICAN AGREEMENT		ACTUAL KM	MET UN-MET
CLASS	47 CFR FCC SEC. 73.207 KM	KM		
100.9 MHZ CO-CHANNEL CHANNEL 265				
KEPS (A) VICTORIA, TX	CO-CHANNEL	AATOA 115 KM	162	MET
CD (A) ALEMAN	CO-CHANNEL	AATOA 111 KM	149	MET
100.7 MHZ (-200 KHZ) CHANNEL 264				
KASE (C) AUSTIN, TX	-200 KHZ	ATOC 165 KM	307	MET
CD, ACUNA (A)	-200 KHZ	AATOA 68 KM	197	MET
GUADALUPE	-200 KHZ	AATOA 68 KM	700	MET

CLASS	APPROPRIATE AGREEMENT 1995 US-MEX AGREE	FCC 73.207	ACTUAL MET (KM)	UN-MET
100.5 MHZ (-400KHZ) CHANNEL 263	RELATION	REQUIRED SPACING (KM)		
KBDR (C2) MIRANDO CITY -400KHZ		ATO C2 55 KM	86	MET
100.3 MHZ (-600KHZ) CHANNEL 262				
KTEX (C) BROWNSVILLE -600KHZ		ATO C600 95 KM	168	MET
MONCLOVA (B) -600KHZ	AATO B 600 69KM		301	MET
LA ROSITA (A) -600KHZ	AATO A 600 31KM		131	MET
101.1 MHZ +200 KHZ CHANNEL 266				
REYNOSA (A) +200 KHZ	AATO A 200 65 KM		166	MET
SABINAS H (A) +200 KHZ	AATO A 200 65 KM		94	MET

CLASS FREQUENCY	RELATION	REQUIRED SPACING 1990 U.S.-MEXICAN AGREEMENT KM	47 CFR FCC SEC. 73.207 KM	ACTUAL (KM)	MET / UN-MET
101.1 MHZ (+200 KHZ) CHANNEL 266					
PARRAS (A)	+200 KHZ	AA TO A200 68 KM			MET
KVPA (A)	+200 KHZ		ATO A200		
PORT ISABEL			45 KM	203	MET
101.3 MHZ (+400 KHZ) CHANNEL 267					
KNCN (C1)	+400 KHZ		ATO C1 400		
SINTON			75 KM	103	MET
MONTERREY (B)	+400 KHZ	AA TO B400 69 KM		284	MET
RIO BRAVO (A)	+400 KHZ	AA TO A400 31 KM		159	MET

CLASS FREQUENCY	REQUIRED SPACING RELATION	1992 U.S.–MEXICAN AGREEMENT KM	47 CFR FCC KM	ACTUAL (KM)	MET	UN-MET

101.5 MHz (100 KHz) CHANNEL 268

KOKE (C1)
COLUMBUS, TX +600 KHz — ATDC600 95 KM — 322 — MET

PIEDRAS NEGRAS (C) +600 KHz — ATDC600 95 KM — 271 — MET

MATAMOROS (A1)
+600 KHz — ATDA600 31 KM — 211 — MET

BENAVIDES COORDINATES
27-35-00 N. LATITUDE
98-24-00 W. LONGITUDE

100.9-4

OVER

US Department of Transportation
Federal Aviation Administration

IN REPLY REFER TO
AERONAUTICAL STUDY
NO. 85-ASW-0543-OE

Southwest Region
P. O. Box 1689
Fort Worth, Texas 76101

AERONAUTICAL STUDY OF PROPOSED CONSTRUCTION OR ALTERATION

SPONSOR	John J. Tibiletti KTXN FM 99 Post Office Box 2682 Victoria, TX 77902	CONSTRUCTION LOCATION PLACE NAME Victoria, Texas	
		LATITUDE 28°48'30"	LONGITUDE 97°03'44"
CONSTRUCTION PROPOSED	DESCRIPTION FM and TV Broadcast Tower See reverse page for frequency	HEIGHT (IN FEET) ABOVE GROUND 1,165	 ABOVE MSL 1,265

A notice has been filed with the Federal Aviation Administration that the above described structure is proposed for construction. As proposed the structure would exceed the standards of Subpart C of Part 77 of the Federal Aviation Regulations and would be identified as an obstruction to air navigation. Accordingly, the FAA is conducting an aeronautical study of the proposal to determine its effect upon the safe and efficient use of the navigable airspace by aircraft and on the operation of air navigation facilities.

In the study, consideration will be given to all facts relevant to the effect of the proposal on existing and planned airspace use; air navigation facilities; airports; aircraft operations, procedures and minimum flight altitudes; and the air traffic control system. However, only those plans on file with the FAA, on the date the notice concerning the above described proposed construction was received, will be considered.

Interested persons are invited to participate in the aeronautical study by submitting comments to the FAA office issuing this notice. To be eligible for consideration, comments must be relevant to the effect the proposed construction would have on aviation, provide sufficient detail to permit a clear understanding, and be received on or before December 20, 1985. Please refer to the aeronautical study number printed in the upper right hand corner of this notice.

This notice may be reproduced and recirculated by any interested person.

ATTACHMENT - See Reverse Page

( ) Proposal reviewed and comments stated in separate letter.

( ) Proposal reviewed and no comments submitted.

Signature and Title

Date

Representing

SIGNED for Clair M. Billington TITLE Airspace Specialist, ASW- 539

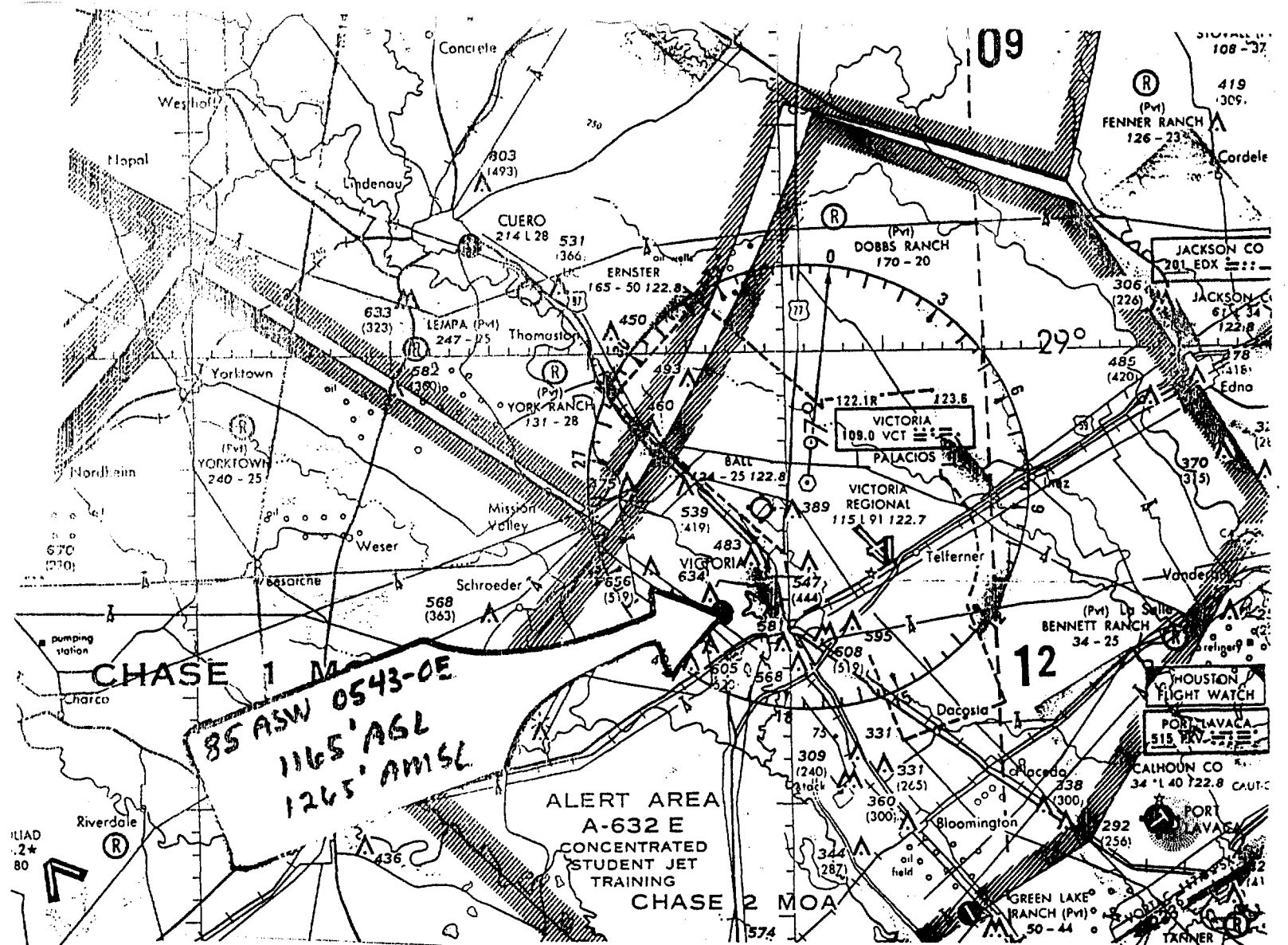
ISSUED IN Fort Worth, Texas ON November 21, 1985

EXHIBIT "A"

AIRPORT MANAGERS - PLEASE POST
COMMENTS INVITED

Page 1

FAA Form 7460-8 (4-83) SUPERSEDES PREVIOUS EDITION SW OP-1 (8-83) Previous Edition Obsolete



The proposed structure would be located approximately 7 nautical miles (NM) southwest of the Victoria Regional Airport, Victoria, Texas. It would exceed the obstruction standards of Part 77 of the Federal Aviation Regulations as follows:

> Section 77.23(a)(1) by 665 feet - a height exceeding 500 feet above ground level at its site.

Preliminary study indicates the proposal would not affect any existing or planned instrument flight rule (IFR) operations, procedures or minimum flight altitudes.

The proposed frequencies and effective radiated power planned for the structure are:

	Frequency	Power
	88.5 MHz	180 watts
	92.3 MHz	180 watts
KVIC	95.1 MHz	100,000 watts
KTXN	98.7 MHz	100,000 watts
	100.9 MHz	180 watts
KZEW	107.9 MHz	100,000 watts
KVCT-TV	Channel 19	

EXHIBIT "A"

Page 2

ATTACHMENT
85-ASW-0543-OE